

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Environmental Protection
Division of Air Quality

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120; 42 USC 7401-7626; 42 USC 7407(d)(1)(A)(i), (ii), and (iii); 42 USC 7410; 40 CFR Part 51, Subpart 1; 40 CFR.51.165; 40 CFR 51.166(g); 40 CFR 52.21; 40 CFR 52.21(r); 40 CFR Part 60; 40 CFR Na 61; 40 CFR 81, Subpart D; 40 CFR 81.318, June 28, 1989 Federal Register (54 FR 27274)

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality. This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained.

Section 1. Definitions. As used in this administrative regulation, terms not defined shall have the meaning given them in 401 KAR 51:001 or, for terms relating to the protection of visibility, in 401 KAR 51:017.

- (1) "Actual emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with paragraphs (a) to (c) of this subsection.
 - (a) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The cabinet shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emission unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
 - (b) The cabinet may presume that source specific allowable emissions for the emission unit are equivalent to the actual emissions of the emission unit.
 - (c) For an emission unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.
- (2) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area.
- (3) "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable permit conditions which limit operating rate, or hours of operation, or both) and the most stringent of the following:
 - (a) The applicable new source performance standards set forth in Title 401, Chapters 57 and 59, or 40 CFR Parts 60 and 61;
 - (b) Any other state and federally approved regulatory emission

- limitations, including those with a future compliance date; or
- (c) The emission rate specified as a state and federally enforceable permit condition, including those with a future compliance date.
- (4) "Begin actual construction" means initiation of physical on-site construction activities on an emission unit which are of a permanent nature. Activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.
- (5) "Building, structure, facility, or installation," means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons, under common control), except the activities of a vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., they have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1987, as incorporated by reference in Section 21 of 401 KAR 51:017.
- (6) "Classification date" means September 22, 1982.
- (7) "Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and has either:
- (a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- (b) Entered into agreements or contractual obligations which cannot be canceled or modified without substantial loss to the owner or operator to undertake a program of construction of the source to be completed within a reasonable time.
- (8) "Construction" means a physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emission unit, which would result in a change in actual emissions.
- (9) "Emission unit" means a part of a stationary source which emits or would have the potential to emit a pollutant subject to regulation under 42 USC 7401-7626.
- (10) "Federal land manager" means, with respect to lands in the United States, the secretary of the department with authority over those lands.
- (11) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. Environmental Protection Agency (U.S. EPA), including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within an applicable State Implementation Plan, and a permit requirement established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart 1, including operating permits issued under a U.S. EPA approved program incorporated into the State Implementation Plan, which expressly requires adherence to a permit issued under the program.
- (12) "Fugitive Emissions" means those emissions that could not reasonably

pass through a stack, chimney, vent, or other functionally equivalent opening.

- (13) "Lowest achievable emissions rate" means, for a source, the more stringent rate of emissions based on the following:
- (a) The most stringent emissions limitation contained in an implementation plan of a state for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or
 - (b) The most stringent emissions limitation achieved in practice by the class or category of stationary source. This limitation, when applied to a major modification, means the lowest achievable emissions rate for the new or modified emission unit within the stationary source. The application of this term shall not permit a proposed new or modified stationary source to emit a pollutant in excess of the amount allowable under an applicable standard under Title 401, Chapters 57 and 59, and 40 CFR Parts 60 and 61.
- (14) "Major modification" means a physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of a pollutant subject to regulation under 42 USC 7401-7626.
- (a) A net emissions increase that is significant for volatile organic compounds shall be significant for ozone.
 - (b) A physical change or change in the method of operation shall not include:
 - 1. Routine maintenance, repair, and replacement;
 - 2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;
 - 3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
 - 4. Use of an alternative fuel or raw material by a stationary source that:
 - a. The source was capable of accommodating before December 21, 1976, unless the change would be prohibited under a permit condition established after December 21, 1976, pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.165; or
 - b. The source is approved to use under a permit issued under this administrative regulation;
 - 5. An increase in hours of operation or in production rate, unless the change is prohibited under a permit condition that was established after December 21, 1976, pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.165; or
 - 6. A change in ownership at a stationary source.
- (15) "Major stationary source" means:
- (a) Except as provided in paragraph (b) of this subsection, a stationary source that emits, or has the potential to emit, 100

tons per year or more of a pollutant subject to regulation under 42 USC 7401-7626.

- (b) For ozone nonattainment areas, a stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit the following:
 - 1. For areas classified as serious, fifty (50) tons per year or more of volatile organic compounds (VOCS) or nitrogen oxides (NO_x);
 - 2. For areas classified as severe, twenty-five (25) tons per year or more of VOCs or NO_x;
 - 3. For areas classified as extreme, ten (10) tons per year or more of VOCs or NO_x.
 - (c) A physical change that would occur at a stationary source not qualifying under paragraph (a) or (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.
 - (d) A source that is major for VOCs shall be considered major for ozone.
- (16) "Mandatory Class I federal area" means an area identified in 40 CFR 81, Subpart D, where the Administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of the Interior, has determined visibility to be an important value.
 - (17) "Natural conditions" means naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.
 - (18) "Necessary preconstruction approvals or permits" means the permits or approvals required under the regulations of Title 401, Chapters 50 to 63.
 - (19) "Net emissions increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:
 - (a) An increase in actual emissions from a particular physical change or changes in method of operation at a stationary source; and
 - (b) Another increase or decrease in actual emissions at the source that is contemporaneous with the particular change and is otherwise creditable.
 - (c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before December 21, 1976, and the date that the increase from the particular change occurs.
 - (d) An increase or decrease in actual emissions shall be creditable only if the cabinet has not relied on it in issuing a permit for the source under this administrative regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.
 - (e) An increase in actual emissions shall be creditable only to the extent that the new level of actual emissions exceeds the old level.

- (f) A decrease in actual emissions shall be creditable only to the extent that:
1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 2. It is state and federally enforceable at and after the time that actual construction on the particular change begins;
 3. The cabinet has not relied on it in issuing a permit or in demonstrating attainment or reasonable further progress; and
 4. It has the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- (g) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.
- (20) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Secondary emissions shall not be counted in determining the potential to emit of a stationary source.
- (21) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the cabinet and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.
- (22) "Secondary emissions" means emissions which would occur as a result of the ,construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For this administrative regulation, secondary emissions shall be specific, well defined, and quantifiable, and shall impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an offsite support facility that would otherwise not be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include emissions which come from a mobile source, e.g., the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
- (23) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant, a rate of emissions that would equal or exceed rates given in Section 12 of this administrative regulation.
- (24) "State Implementation Plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been submitted by the cabinet and approved by the U.S. EPA.
- (25) "Stationary source" means a building, structure, facility, or

installation that emits or may emit an air pollutant subject to regulation under 42 USC 7401-7626.

- (26) "Visibility impairment" means a humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

Section 2. Applicability.

- (1) This administrative regulation shall apply to new major sources or major modifications commenced after the classification date defined in Section 1(6) of this administrative regulation and that will locate in or impact upon an area designated as nonattainment pursuant to 42 USC 7407(d)(1)(A)(i). Area designations are contained in 40 CFR 81.318.
- (2) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas which potentially have an impact on visibility in a mandatory Class I federal area.

Section 3. Initial Screening Analyses and Determination of Applicable Requirements.

- (1) Review of all sources for emissions limitation compliance. The cabinet shall examine each proposed major new source and proposed major modification to determine if the source or modification will meet all applicable emission requirements in Title 401, Chapters 50 to 63. If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emission requirements, the permit to construct shall be denied.
- (2) Review of specified sources of air quality impact. In addition, the cabinet shall whether the major stationary source or major modification would be constructed in an area designated as nonattainment pursuant to 42 USC 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major. If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source would not cause a new violation.
- (3) Fugitive emission sources. Sections 5 and 11 of this administrative regulation shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one of the following categories:
- (a) Coal cleaning plants (with thermal dryers);
 - (b) Kraft pulp mills;
 - (c) Portland cement plants;
 - (d) Primary zinc smelters;
 - (e) Iron and steel mills;
 - (f) Primary aluminum ore reduction plants;
 - (g) Primary copper smelters;
 - (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (i) Hydrofluoric, sulfuric, or nitric acid plants;

- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants;
- (u) Fossil-fuel boilers (or combination of fossil-fuel boilers) totaling more than 250 million BTUs per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
- (aa) Another stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59, or 40 CFR Parts 60 and 61.

Section 4. Sources Locating In Designated Attainment or Unclassifiable Areas.

- (1) This section shall apply only to new major stationary sources or new major modifications which will locate in designated attainment or unclassifiable areas pursuant to 42 USC 7407(d)(1)(A)(ii) or (iii) if the source or modification would cause impacts which exceed the significance levels specified in Section 13 of this administrative regulation at a locality that does not or would not meet the national ambient air quality standards.
- (2) Sources to which this section applies shall meet the requirements in Section 5(1), (2) and (4) of this administrative regulation. However, the sources may be exempt from Section 5(3) of this administrative regulation.
- (3) For sources of sulfur dioxide (SO₂), particulate matter, and carbon monoxide, (CO), the determination of whether a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model pursuant to 401 KAR 50:040.
- (4) For sources of NO_x, the initial determination of whether new major source or major modification would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO₂) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO_x by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.
- (5) For ozone, sources of VOCs locating outside a designated ozone nonattainment area shall be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source shall be permitted under the applicable provisions of this

administrative regulation until the area is designated nonattainment pursuant to 42 USC 7407(d) (IXA) (i).

- (6) The determination as to whether a new major source or major modification would cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.
- (7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas the operation of which would cause a new violation of a national ambient air quality standard but would not contribute to an existing violation may be approved only if the following conditions are met:
 - (a) The new source is required to meet an emission limitation, or a design, operational or equipment standard, or existing sources are controlled so that the new source will not cause a violation of a national ambient air quality standard.
 - (b) The new emission limitations for the new and existing sources affected shall be state and federally enforceable in accordance with Section 7 of this administrative regulation.

Section 5. Conditions for Approval. This section shall apply to new major stationary sources or major modifications which would be constructed in an area designated as nonattainment pursuant to 42 USC 7407(d) (1) (A) (i) for a pollutant for which the stationary source or modification is major. Approval may be granted only if the following conditions are met:

- (1) The new major source or major modification shall be required to meet an emission limitation which specifies the lowest achievable emission rate for the source.
- (2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant (or an entity controlling, controlled by, or under common control with the applicant) in the Commonwealth of Kentucky (Commonwealth) are in compliance with all applicable emission limitations and standards specified in Title 401, Chapters 50 to 63, and 40 CFR Parts 60 and 61 and 42 USC 7401-7626, or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.
- (3)
 - (a) Except in the case of VOCs or NO., emissions from existing sources in the affected area of the proposed new major source or modification (whether or not under the same ownership) shall be reduced (offset) so that there will be reasonable progress toward attainment of the applicable national ambient air quality standard. Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.
 - (b) The ratio of total emission reductions of VOCs or NO., to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:
 - 1. For marginal nonattainment areas, at least 1.1 to 1;
 - 2. For moderate nonattainment areas, at least 1.15 to 1;
 - 3. For serious nonattainment areas, at least 1.2 to 1;
 - 4. For severe nonattainment areas, at least 1.3 to 1;
 - 5. For extreme nonattainment areas, at least 1.5 to 1.
- (4) The emission reductions shall provide a positive net air quality benefit in the affected area. Atmospheric simulation modeling shall not be

required for VOCs and NO_x. Except as provided in Section 4(5) of this administrative regulation, compliance with subsection (3) of this section and Section 6(7) of this administrative regulation shall be adequate to meet this condition.

- (5) For a major, stationary source or major modification locating in an area designated nonattainment with respect to that pollutant for which the proposed source or modification is major, permits issued under this administrative regulation shall specify that construction shall not commence until the U.S. EPA has approved the cabinet's plan relating to the requirements of Nd D, Title 1, of 42 USC 7401-7626.
- (6) The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 6. Baseline for Determining Credit for Emission Offsets. The baseline for determining credit for emission reductions or offsets shall be the emission limitations in effect at the time the application to construct or modify a source is filed. For areas where the demonstration of attainment for the State Implementation Plan was based on actual emissions, the baseline for determining offset credit shall be actual emissions. Credit for emission offset purposes may be allowed for existing control @ goes beyond that required by regulations. Offset calculations shall be made on a pound per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate. Offsets may be calculated on a tons per year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period. If the cabinet requires certain hardware controls in lieu of an emission limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

- (1) No applicable emission limitation. If the requirements of the cabinet do not contain an emission limitation for a source or source category, the emission offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period. If the emission limitations required by the cabinet allow greater emissions than the uncontrolled emission rate of the source, emission offset credit shall be allowed only for control below the uncontrolled emission rate.
- (2) Combustion of fuels. The emissions for determining emission offset credit involving an existing fuel combustion source shall be the allowable emissions under the emission limitation requirements of the cabinet for the type of fuel being burned at the time the new major source or major modification application is filed. If the existing source has switched to a different type of fuel at some earlier date, a resulting emission reduction (either actual or allowable) shall not be used for emission offset credit. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved shall not be acceptable unless the -permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction if the source switches back to a dirtier fuel at some later date.

- (3) Operating hours and source shutdown. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the new source application is filed shall not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.
- (4) Credit for hydrocarbon substitution. No emission offset credit shall be allowed for replacing one (1) volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane or trichlorofluoroethane.
- (5) Banking of emission offset credit. New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation. An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit. These banked emissions offsets may be used under the preconstruction review program required in 42 USC 7401-7626 as long as these banked emissions are identified and accounted for in the Commonwealth's control strategy.
- (6) Offset credit for meeting NSPS or NESHAPS. If a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) in compliance with Title 401, Chapters 59 and 57 respectively, and a different emission limitation is required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emission offsets. The difference in emissions between NSPS or NESHAPS and other emission limitations shall not be used as offset credit.
- (7) Offsets. The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this Section for increased emissions of an air pollutant only by obtaining emission reductions of the air pollutant from the same source or other sources in the same nonattainment area, except that the cabinet may allow the owner or operator of a source to obtain the emission reductions in another nonattainment area if:
 - (a) The other area has an equal or higher nonattainment classification than the area in which the source is located; and
 - (b) Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

Section 7. Administrative Procedures. The necessary emission offsets may be proposed either by the owner of the proposed source or by the cabinet. The emission reduction shall be enforceable by the cabinet and the U.S. EPA and shall be accomplished by the start-up date of the new source. If emission reductions are to be obtained in a state that neighbors the Commonwealth for a new source to be located in the Commonwealth, the emission reductions shall be

enforceable by the neighboring state or local agencies and the U.S. EPA.

- (1) Source initiated emission offsets. The owner or operator of a source may propose emission offsets which involve reductions from sources controlled by the owner (internal emission offsets) or reductions from other sources (external emission offsets, if the emission offsets meet the requirements of this section and Section 5(3) of this administrative regulation. An internal emission offset shall be made enforceable by inclusion as a condition of the new source permit. An external emission offset shall not be accepted unless the affected source is subject to a new emission limitation requirement of the cabinet to ensure that its emissions shall be reduced by a specified amount in a specified time. The form of the new emission limitation shall be enforceable by the cabinet and by the U.S. EPA.
- (2) Cabinet initiated emission offsets. The cabinet may commit to reducing emissions from existing sources (including mobile sources) to provide a net air quality benefit in the impact area of the proposed new source to accommodate the proposed new source. The commitment shall be reflected in the emission limitation requirements of the cabinet for the new and existing sources as required by this section.

Section 8. Source Obligation.

- (1) An owner or operator who constructs or operates an applicable source or modification not in accordance with the application submitted pursuant to Sections 4 and 5 of this administrative regulation or with the terms of an approval to construct or an owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982, without applying for and receiving approval according to the requirements of this section shall be subject to appropriate enforcement action.
- (2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of the approval, or if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The cabinet may extend the eighteen (18) month period upon satisfactory showing that an extension is justified.
- (3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63, and any other requirements under local, state, or federal law.
- (4) At the time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in a state and federally enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 9. Permit Condition Rescission.

- (1) An owner or operator holding a permit for a stationary source or modification which was issued pursuant to 401 KAR 51:050 or 401 KAR 51:051E may request that the cabinet rescind the permit condition.
- (2) The cabinet shall rescind a permit condition if so requested if the

applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or a portion thereof if construction would have commenced after September 22, 1982, and if the owner or operator demonstrates that the rescission would not violate the requirements of Section 5(3) and Section 8 of this administrative regulation.

Section 10. Class I Areas.

- (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:
 - (a) International parks;
 - (b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and
 - (c) National parks which exceed 6,000 acres in size.
- (2) Another area, unless otherwise specified in the legislation creating the area, is designated Class H but may be redesignated as provided in 40 CFR 51.166(g), as published in the Code of Federal Regulations, Title 40, July 1, 1991.
- (3) The visibility protection requirements of this section and Section 11 of this administrative regulation shall apply only to sources which may impact a mandatory Class I federal area.
- (4) The following areas may be redesignated only as Class I or II:
 - (a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national shore or seashore; and
 - (b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 11. Protection of Visibility.

- (1) New source review-applicability and exemptions.
 - (a) No stationary source or modification to which this section applies shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements.
 - (b) This section shall apply to construction of a new major stationary source or major modification that would both be constructed in an area designated as nonattainment under 42 USC 7407(d)(1)(A)(i) and potentially have an impact on visibility in a Class I area.
 - (c) This section shall apply to a major stationary source or major modification for each pollutant subject to regulation under 42 USC 7401-7626 that it would emit, except as provided in paragraphs (d) and (e) of this subsection.
 - (d) This section shall not apply to a particular major stationary source or major modification if:
 1. The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at the institution, and the Governor of the Commonwealth requests that it be exempt from those

requirements.

2. The source is a portable stationary source which has previously received a permit under this section; and:
 - a. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;
 - b. The emissions from the source would not exceed its allowable emissions;
 - c. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and
 - d. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.
- (e) This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:
 1. Would impact no Class I area and no area where an applicable increment is known to be violated; and
 2. Would be temporary.
- (2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that would occur in a Class I area as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.
- (3) Federal land manager notification.
 - (a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas have an affirmative responsibility to protect the air quality related values (including visibility) of the Class I lands and to consider, in consultation with the cabinet, whether a proposed source or modification will have an adverse impact on these values.
 - (b) The cabinet shall provide written notification to all affected federal land managers of a permit application for a proposed new major stationary source or major modification that may affect visibility in a Class I area. The cabinet shall also provide the notification to the federal official charged with direct responsibility for management of lands within the Class I area. The notification shall include a copy of all information relevant to the permit application and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to a public hearing on the application for a permit to construct. The notification shall include an analysis of the proposed source's anticipated impacts on visibility in a Class I area. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advance notification of the permit application.

- (c) The cabinet shall consider an analysis performed by the federal land manager provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area. If the cabinet finds that the analysis does not demonstrate to the satisfaction of the cabinet that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 50:035, Section 4, either explain that decision or give notice as to where the explanation can be obtained.
- (d) Adverse impact on visibility as it applies to Section 11(3)(c) of this administrative regulation shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.
- (4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 50:035 in processing applications under this section. The cabinet shall follow the procedures at 40 CFR 52.21(r) as in effect on August 7, 1980, to the extent that the procedures of 401 KAR 50:035 do not apply.
- (5) National visibility goal. The cabinet shall only issue permits to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing future, and remedying existing, impairment of visibility in Class I areas which impairment results from manmade air pollution. In making the decision to issue a permit the cabinet may take into account the overriding factors of the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.
- (6) Monitoring. The cabinet may require monitoring of visibility in a Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA. The method selected shall be determined on a case-by case basis by the cabinet. The cabinet shall not undertake visibility monitoring in a Class I area without the approval of the federal land manager. Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 12. Significant Pollutant and Emission Rate. For this administrative regulation, the following pollutant and emission rates shall be considered significant.

Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy of particulate matter emissions
	15 tpy of PM ₁₀ emissions
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy

Section 13. Significant Levels of Air Quality Impact. For this administrative regulation, the following levels of air quality impact shall be considered significant.

Pollutant	Averaging Time				
	Annual Average	24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	-----	25 $\mu\text{g}/\text{m}^3$	-----
PM ₁₀	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	-----	-----	-----
Nitrogen Dioxide	1.0 $\mu\text{g}/\text{m}^3$	-----	-----	-----	-----
Carbon Monoxide	-----	-----	0.5mg/m ³	-----	2mg/m ³

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(Appendix change)			
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